

After a preliminary hearing held on April 25, 1995, the Administrative Law Judge entered a Preliminary Hearing Order that denied claimant's request for temporary total

compensation and medical treatment. No reason was given by the Administrative Law Judge for the denial of benefits.

Claimant appeals and first raises the issue as to whether the lack of claimant's use of a seat belt is a valid defense in a claim for workers compensation benefits. Claimant was injured when he was involved in an accident while driving a trash truck while employed by the respondent on January 4, 1995. Claimant was a sanitation truck driver and the evidence established that the claimant was not wearing the seat belt provided by the respondent at the time of the accident. He was injured when he was thrown out of the trash truck through the front windshield.

The respondent argues that the claimant's claim for benefits should be denied based on K.S.A. 44-501(d)(1) which generally provides that if an injury results from the employee's willful failure to use a guard against an accident voluntarily provided by the employer, the compensation for that injury shall be disallowed. Both the respondent and the claimant assume that the Administrative Law Judge denied the requested benefits based on this defense. However, the Appeals Board has reviewed the preliminary hearing record and finds that the medical records that were admitted into evidence indicate that Robert R. Brown, D.O., claimant's treating physician, in a letter dated February 11, 1995 to the respondent returned the claimant to modified duty for one (1) week and then to full duty. Accordingly, the Administrative Law Judge could have denied the claimant's request for benefits based on the fact that there was no evidence in the preliminary hearing record to establish that the claimant was temporarily totally disabled or that he needed medical treatment.

If the Administrative Law Judge denied the benefits because there was no evidence that the claimant was temporarily totally disabled or needed medical treatment, the Appeals Board does not have jurisdiction to review this Preliminary Hearing Order. See K.S.A. 44-534(a)(2). However, if the benefits were denied based on the seat belt defense raised by the respondent, the Appeals Board does have jurisdiction pursuant to K.S.A. 44-534(a)(2) to review the Preliminary Hearing Order.

The Administrative Law Judge has chosen not to inform the parties or the Appeals Board as to his reason for denying the requested benefits. The Appeals Board therefore remands the Preliminary Hearing Order to the Administrative Law Judge for a specific finding as to why the benefits were denied.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Preliminary Hearing Order of Administrative Law Judge Steven J. Howard, dated April 28, 1995 is remanded for a specific finding as to why the claimant's request for compensation benefits was denied.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of July 1995.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: Steven D. Treaster, Overland Park, KS  
Mary O. Thompson, Kansas City, MO  
Steven J. Howard, Administrative Law Judge  
David Shufelt, Acting Director